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KIRTON AND MCCONKIE 60 EAST SOUTH TEMPLE, SUITE 1800 SALT LAKE CITY, UT 84111				BOVEJA, NAMRATA		
ART UNIT		PAPER NUMBER				
3622						
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/735,350	REGISTER ET AL.	
	Examiner	Art Unit	
	PINKY BOVEJA	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03/06/2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 12 December 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

1. This office action is in response to the communication filed on 03/06/2008.
2. Claims 1-11 are presented for examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-11 are rejected under U.S.C. 103(a) as being unpatentable over Virine et al (Patent Number 6,604,138 hereinafter Virine) in view of *Giacalone, JR. (US Publication Number 2001/0052000)* and further in view of Official Notice.

In reference to claim 1, Virine teaches an enterprise media distribution system comprising: an enterprise media distribution platform or framework *comprising*: one or more client player devices (i.e. personal unit) placed at each business location (i.e. a gym or club), each of the client player devices being independently supported and in communication with an internal audio/visual system installed in the facility at the respective business location (col. 5 lines 51-62, col. 6 lines 27-31, col. 9 lines 25-26, and Figure 2B); an independent customizable media broadcast supported on each of the client player devices and comprising audio, visual, and/or informational media content thereon that may be specific to each of the particular business locations in which the client player device(s) is/are located (i.e. different targeted content is presented to different users) (col. 1 lines 33-37, col. 2 lines 26-61, col. 4 lines 42-55,

col. 6 lines 1-19, col. 7 lines 11-35, and Figures 1 and 4); a chain network system having at least one chain server servicing the business chain (i.e. or a business location itself, if there is just one location of that business), said chain server in communication with each client player device in operation in the business chain (i.e. or a business location itself, if there is just one location of that business) by way of a network configuration facilitating the exchange of information between the client player devices and the chain server (col. 4 lines 7 to col. 5 lines 31); and a central server system comprising one or more central servers in communication with the chain servers by way of a computer network configuration facilitating the exchange of information between the chain and central servers (col. 4 lines 7 to col. 5 lines 31 and Figures 1 and 3B).

Virine does not specifically teach a business operator customizing audio, visual, or informational content to be broadcast at one or more particular business locations where client player devices are located. Giacalone, JR. teaches a business operator customizing audio, visual, or informational content to be broadcast at one or more particular business locations where client player devices are located (page 3 paragraphs 22 and 23, page 4 paragraphs 38 to page 5 paragraph 41, page 5 paragraph 43, and Figures 1 and 7-9). It would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify Virine to include a business operator customizing audio, visual, or informational content to be broadcast at one or more particular business locations where client player devices are located to enable the business operator to control the way messages appear and to tailor them for the user's by adding a date for the sale event for example.

Virine does not teach a plurality of business chains, each comprising a plurality of facilities at respective business locations. In reference to claim 1, Official Notice is taken it that it is old and well known to provide client player devices at plurality of business chains with multiple facilities and locations such as sending messages for display to multiple franchises simultaneously. Since, the client player devices are all connected to a network, whether the devices are located in one room of a building, in multiple rooms of building, or in different buildings, they are able to receive the content from the central server through the network and therefore making it possible for people in remote locations to gain access to information. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in Virine's invention, the capability of interacting with client player devices in a plurality of business chains in a plurality of facilities and respective locations to enable anybody connected to the network regardless of the location to receive appropriate information.

4. In reference to claim 2, Virine teaches the enterprise media distribution system of wherein said customizable media broadcast comprises media selected from the group consisting of, audio data, video data fed to video screens located at a business location, advertisements, announcements, and other informational content (col. 4 lines 56-67, col. 6 lines 1-20, and col. 7 lines 10-34).

5. In reference to claims 3 and 10, Virine teaches the enterprise media distribution system of wherein said chain server comprises an updating server (col. 7 lines 4-9 and 36-40 and col. 8 lines 45-56).

6. In reference to claims 4 and 11, Virine teaches the enterprise media distribution system of wherein said chain server comprises a caching server (i.e. local server stores content) (col. 5 lines 15-31 and col. 6 lines 10-12).

7. In reference to claim 5, Virine teaches an in-store media broadcasting system comprising: a central server having a data layer (col. 7 lines 52-63); a chain server having a data layer (col. 5 lines 10-14 and 51-56), wherein the chain server is connected to the central server via a computer network (col. 4 lines 7 to col. 5 lines 31); a client player device having a presentation layer for use in providing and controlling a customizable media broadcast (col. 5 lines 51-62, col. 6 lines 27-31, col. 9 lines 25-26, and Figure 2B), the client player device in communication with the chain server (col. 4 lines 7 to col. 5 lines 31); and an interface layer that selectively interacts with the data layer and the presentation layer, wherein control over the broadcast is experienced locally at the client player device (i.e. touch screen) (col. 4 lines 42-55 and col. 7 lines 23-35).

Virine does not specifically teach a business operator customizing audio, visual, or informational content to be broadcast at one or more particular business locations where client player devices are located. Giacalone, JR. teaches a business operator customizing audio, visual, or informational content to be broadcast at one or more particular business locations where client player devices are located (page 3 paragraphs 22 and 23, page 4 paragraphs 38 to page 5 paragraph 41, page 5 paragraph 43, and Figures 1 and 7-9). It would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify Virine to include a business

operator customizing audio, visual, or informational content to be broadcast at one or more particular business locations where client player devices are located to enable the business operator to control the way messages appear and to tailor them for the user's by adding a date for the sale event for example.

8. In reference to claim 6, Virine teaches a method for establishing an enterprise media distribution system for broadcasting media at one or more business locations existing within a business chain, said method comprising: equipping a business chain with at least one chain server operable within a chain server system (i.e. providing a local server at a business) (Figures 1 and 3B), said chain server operated and managed by business chain personnel (who manages the chain server is intended use and not given weight); connecting, via a computer network, said chain server to a central server system comprising at least one central server to facilitate the exchange of information between the chain server and the central server (col. 4 lines 7 to col. 5 lines 31 and Figures 1 and 3B), said central server comprising broadcast data retrievable by said chain server (col. 8 lines 32-56 and Figure 3B); connecting one or more client player devices located at respective remote business chain locations to said chain server system via a computer network to facilitate the exchange of broadcast and broadcast-related data between said chain server and said client player devices (col. 4 lines 7 to col. 5 lines 31 and Figure 2); causing each of said client player devices to communicate with the chain server to exchange broadcast and broadcast-related data, said client player devices capable of running independent, in-store media broadcasts (col. 4 lines 7 to col. 5 lines 31, col. 7 lines 11-58, and Figure 2).

Virine does not specifically teach a business operator customizing audio, visual, or informational content to be broadcast at one or more particular business locations where client player devices are located. Giacalone, JR. teaches a business operator customizing audio, visual, or informational content to be broadcast at one or more particular business locations where client player devices are located (page 3 paragraphs 22 and 23, page 4 paragraphs 38 to page 5 paragraph 41, page 5 paragraph 43, and Figures 1 and 7-9). It would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify Virine to include a business operator customizing audio, visual, or informational content to be broadcast at one or more particular business locations where client player devices are located to enable the business operator to control the way messages appear and to tailor them for the user's by adding a date for the sale event for example.

9. In reference to claim 7, Virine teaches the method wherein said chain server system comprises a local area network or business Intranet (col. 2 lines 44-61 and col. 14 lines 12-17).

10. In reference to claim 8, Virine teaches the method, wherein said customizable in-store media broadcast is controlled substantially by said chain server (col. 4 lines 56-67, col. 6 lines 1-12, col. 7 lines 3-35, and col. 9 lines 50 to col. 10 lines 25).

11. In reference to claim 9, Virine teaches the method wherein said customizable in-store media broadcast is controlled substantially by said client player device (col. 7 lines 26-35 and 54-60).

Response to Arguments

12. Applicant's remarks/arguments filed on 03/06/2008 have been fully considered by the Examiner, but they are moot in view of the new ground(s) of rejection. Amendments to the claims have been entered and considered.

13. Applicant's amendment to claim 1 successfully addresses the previously made 35 USC 112 second paragraph rejection, and this rejection has now been removed.

14. Applicant's argument that Virine does not teach a business operator or advertiser customizing informational content is based on Applicant's amendment to claims 1, 5, and 6 and 32 is not based on previously submitted claims. Therefore, Applicants remarks that are addressed to new limitations in the claims have been addressed in the rejection necessitated by the amendments in the body of the office action above.

15. In reference to claim 1, since the Applicant was given the opportunity and has failed to traverse the Examiner's assertion of Official Notice, the common knowledge or well known in the art statement is taken to be admitted prior art.

16. With respect to claim 1, the Applicant argues that Virine does not teach a plurality of business chains comprising a plurality of facilities at respective business locations.

While the Applicant may be correct in this assertion, the rejection for claim 1 and specifically for this limitation of claim 1 was made under Virine in view of Official Notice and not just in reliance of Virine independently. Therefore, the Applicant is making arguments against the references individually. As addressed above, the Official Notice addresses teaches this limitation, since Official Notice is taken it that it is old and well known to provide client player devices at plurality of business chains with multiple

facilities and locations such as sending messages for display to multiple franchises simultaneously. Since, the client player devices are all connected to a network, whether the devices are located in one room of a building, in multiple rooms of building, or in different buildings, they are able to receive the content from the central server through the network and therefore making it possible for people in remote locations to gain access to information. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to include in Virine's invention, the capability of interacting with client player devices in a plurality of business chains in a plurality of facilities and respective locations to enable anybody connected to the network regardless of the location to receive appropriate information. The Examiner would like to point out to the Applicant that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references (**Virine and Official Notice**). See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). It is the combination of these references that addresses the claim limitations, and therefore, each reference will not teach all the limitations on its own. Furthermore, the Applicant has failed to challenge the Official Notice properly, and he has not even made a statement on record stating that he is challenging the Official Notice, since the Applicant has not said anything regarding that the Applicant was not aware that the claimed elements were well known before the filing of his application and before his invention was developed. Per MPEP 2144.03, "A seasonable challenge constitutes a demand for evidence be made as soon as practicable during prosecution. Thus the applicant is

charged with rebutting the well known statement in the next reply after the Office Action in which the well known statement was made.” The Applicant has not submitted any rebuttal of the well-known statements. In the paragraph in MPEP 2144.03 immediately preceding the above citing, reference is made to *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420-421 (CCPA 1970) that “Furthermore, the applicant must be given the opportunity to challenge the correctness of such assertions and allegations.” Again, the Applicant has not challenged the correctness of the assertions and not even the use of Official Notice itself.

17. Applicants additional remarks are addressed to new limitations in the claims and have been addressed in the rejection necessitated by the amendments.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Namrata (Pinky) Boveja whose telephone number is 571-272-8105. The examiner can normally be reached on Mon-Fri, 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The **Central FAX** phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 1866-217-9197 (toll-free).

/N. B./

Examiner, Art Unit 3622

/Yehdega Retta/

Primary Examiner, Art Unit 3622